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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

DENNIS D. SMITH,

Defendant and Appellant.

E035596

(Super.Ct.No. FSBSS036493)

**OPINION**

APPEAL from the Superior Court of San Bernardino County. Michael A. Smith, Judge. Affirmed.

Patricia A. Andreoni, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Gary W. Schons, Senior Assistant Attorney General, Ronald A. Jakob and Andrew S. Mestman, Deputy Attorneys General, for Plaintiff and Respondent.

The trial court found true that defendant met the criteria of a mentally disordered offender (MDO) (Pen. Code, §§ 2962, 2966, subd. (c)).<sup>1</sup> Defendant was then ordered returned to Patton State Hospital (Patton) for further treatment and care. Defendant's sole contention on appeal is that there was insufficient evidence that he met the criteria of an MDO. We reject this contention and affirm the judgment.

## I

### FACTUAL AND PROCEDURAL BACKGROUND

On December 2, 1999, defendant was sentenced to two years in state prison for making criminal threats (§ 422). On August 13, 2000, the Board of Prison Terms (the BPT) determined that defendant met the criteria as an MDO within the meaning of section 2962. Therefore, as a condition of parole, defendant was committed and required to accept treatment through the State Department of Mental Health. At a hearing on September 26, 2001, the BPT determined that defendant continued to be an MDO and extended his commitment pursuant to sections 2962 and 2966, subdivision (c).

On August 28, 2002, the BPT retained defendant on parole and reaffirmed the special conditions of parole pursuant to section 2962. Subsequently, on October 15, 2002, defendant filed a petition challenging the BPT's August 28 determination pursuant to section 2966, subdivision (c).

On February 17, 2004, a court trial commenced. Prior to trial, the People submitted the medical report from Patton written by Dr. Robert Welsh, who was a staff

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<sup>1</sup> All future statutory references are to the Penal Code unless otherwise stated.

psychologist at Patton. Defense counsel submitted the medical report of Dr. Larry Davis. At the time of trial, the court indicated it had reviewed both reports and then admitted both reports into evidence.

The information and opinions contained in Dr. Welsh's report, which was dated July 12, 2002, was based on Dr. Welsh's review of defendant's medical records and supporting documents, consultation with clinical and nursing staff assigned to work with defendant, and observation of defendant for approximately six months. Dr. Welsh noted that defendant had been committed to the California Department of Mental Health by the BPT after being certified as an MDO pursuant to section 2962 and that defendant's controlling offenses were making criminal threats (§ 422), cruelty to an elderly person (§ 368, subd. (a)(1)), and battery on a correctional officer (§ 243).

In the criminal threat and cruelty to an elderly person offenses, defendant forced entry into an elderly woman's residence, put a mattress over her body, and attempted to suffocate her. During the incident, he stated he was going to kill her. Subsequently, defendant grabbed the elderly woman by the ankle and dragged her into another room. In the last offense, defendant, while incarcerated, refused to come out of his prison cell to attend a psychiatric appointment. When correctional officers tried to remove defendant from his cell, he threatened them and then kicked one of the officers in the groin.

Dr. Welsh determined that defendant had a severe mental disorder as defined by section 2962, subdivision (a). According to defendant's records, defendant had a long-standing history of mental health problems dating back to the mid 1970's, when he was first hospitalized in North Carolina for depression. Several years later, he was

hospitalized for two weeks for depression; then in 1997, he sought mental health treatment on 19 different occasions in San Diego. At that time, defendant was diagnosed with bipolar disorder. In 1998, he obtained mental health services on six occasions. Following the criminal threats incident, defendant was involuntarily hospitalized in an inpatient psychiatric facility for 72 hours.

After being incarcerated, defendant received psychiatric care and was diagnosed with schizoaffective disorder, bipolar type, and depression NOS. He was frequently observed with symptoms of a mood disorder and disorganized thinking and admitted to hearing auditory hallucinations. His symptom pattern had included a history of mood swings, rapid and pressured speech, irritability, verbal and physical aggression, anger, paranoid delusions, grandiosity, impulsivity, insomnia, poor insight and judgment, and substance abuse. Dr. Welsh opined defendant suffered from a severe mental disorder based on defendant's history of psychiatric symptoms, hospitalizations, and corroboration between defendant's clinical history and behavioral presentation.

Dr. Welsh also concluded that defendant's mental disorder was not in remission. Within the previous year, defendant had evidenced symptoms of acute mental illness, and there were several documented incidents where defendant exhibited symptoms of severe mental illness. Specifically, Dr. Welsh determined that defendant had shown verbal and physical aggression, anger, poor insight and judgment, pressured speech, and mood swings. Dr. Welsh identified several specific examples where defendant exhibited acute symptoms of severe mental illness, such as (1) an incident where defendant became angry and argued while receiving his medication; (2) an incident where defendant kicked

another patient; (3) an incident where defendant made sexually inappropriate comments to a psychiatric technician; (4) incidents where defendant was observed yelling at peers; and (5) an altercation involving defendant and another peer in which defendant was observed shoving and spitting on a peer while playing pool. Dr. Welsh, who had had frequent contact with defendant over the course of the previous six months and who had observed defendant's behavior on a near daily basis, opined that there was sufficient evidence that defendant was not in remission given defendant's behavior. Dr. Welsh also concluded that defendant could not be kept in remission without treatment.

Dr. Welsh further opined that defendant presented a substantial danger of physical harm to others by reason of his severe mental disorder. This opinion was based on defendant's verbally and physically aggressive behavior. Dr. Welsh noted that within the previous three months, defendant had become physically violent to another peer: defendant had been seen pushing another peer so hard that the peer stumbled backwards while at the same time defendant raised a pool cue in a threatening manner. Dr. Welsh determined that defendant was unable to manage his anger impulses and continued to be dangerous, as he had continued to cycle in and out of acute mental health symptoms.

Dr. Welsh also noted that defendant's history of habitual offending contributed to defendant's dangerousness. Defendant had been either arrested for or convicted of 22 different offenses including the current three qualifying offenses. He had two incidents of serious violent offenses (assault on a female and assault with a deadly weapon) prior to the instant three offenses. The remainder of the offenses were either drug-related or property offenses. Dr. Welsh explained that although the majority of the offenses

defendant had committed were not serious violent felonies, taken together, these crimes, both violent and nonviolent, represent a history indicative of poor social adjustment and impaired judgment. Another significant factor that made defendant a substantial danger of future violence was defendant's history of substance abuse. Even though defendant attended an intensive 16-week substance abuse program at Patton, his performance was marginal. Other factors which made defendant a substantial danger of future violence were defendant's personality disorder, impulsivity, anger, lack of remorse and/or minimizing his offenses, habitual noncompliance with his unit staff, and failure under supervision. Accordingly, Dr. Welsh and the Interdisciplinary Treatment Team (ITT) at Patton concluded that defendant represented a substantial danger to the community by reason of his mental illness.

Lastly, Dr. Welsh and ITT opined that there was not reasonable cause to believe defendant safely and effectively could be treated in the community based on defendant's behavior in the previous three months. Defendant had been argumentative and noncompliant with the unit staff and argumentative with his unit psychiatrist about his medications, which was not a good indicator for risk management in a less restrictive setting. Although defendant was able to articulate a relapse prevention plan, he had difficulty applying it in emotionally charged situations, and he had demonstrated relatively little insight into his mental illness and had little appreciation for psychiatric relapse. He had not shown that he could anticipate a psychiatric relapse, as he had not approached any of the unit staff when these crises arose; instead, he blamed others and

became exceedingly unreasonable in normal negotiations. It was therefore recommended that defendant should remain in inpatient care.

The People rested its case upon the submission of defendant's medical records.

Thereafter, defendant presented his case. Michael Mondoruza, a patient at Patton, testified that he had been a patient with defendant in his unit on April 20, 2002. On that date, Mondoruza and defendant were playing pool when another patient, Cary Stilfield, approached and wanted to play pool. Stilfield ruined their game by hitting the balls and attempted to grab the cue stick from defendant's hand. Defendant attempted to explain to Stilfield that he would have to wait, but Stilfield demanded his turn. Mondoruza asserted that defendant neither threatened Stilfield nor spat on him. Rather, when staff came into the room due to their raised voices, Stilfield lied and accused defendant of spitting on him and hitting him with the cue stick.

Defendant, who testified on his own behalf, denied spitting on Stilfield or attempting to hit him with the cue stick. He stated that he had participated in all modes of treatment as he was instructed; that he had made plans for his release, including a relapse prevention plan; that he intended to move back home near his father in North Carolina to help him with his rental business; and that he had already located a mental health center and doctor in North Carolina. Defendant contested reports that he had struck peers during his stay and that he had taken antipsychotic medication on four occasions for his agitation. He conceded that he had severe mental illness but believed that he was in remission due to the medication he was taking and that he no longer had aggressive tendencies.

Defendant also submitted the medical report of Dr. Larry Davis, who had interviewed defendant for about two hours in March 2003, which was about five months after the BPT determined defendant's continued MDO status. Based on this interview and a review of defendant's medical records, Dr. Davis opined that defendant was in remission from his bipolar disorder and did not represent a substantial danger of physical harm to others by reason of his mental disorder. Dr. Davis also concluded that defendant required continued medication and/or access to psychotherapy and that his treatment could be managed in an outpatient setting.

Following arguments by counsel, the trial court concluded that as of August 2002 defendant suffered from a severe mental disorder which was not in remission and presented a substantial danger of physical harm to others by reason of his mental disorder. This appeal followed.

## II

### DISCUSSION

Defendant contends there was insufficient evidence to support the trial court's finding that he met the criteria of an MDO. We disagree.

The same standard of review used in determining a claim of insufficiency of the evidence in a criminal matter also applies to appellate review of MDO proceedings. (*People v. Miller* (1994) 25 Cal.App.4th 913, 920.) In reviewing a claim of insufficient evidence, we view the entire record in the light most favorable to the judgment and determine whether it discloses substantial evidence -- i.e., evidence that is reasonable,



credible, and of solid value -- to support the jury's finding. (*People v. Valdez* (2001) 89 Cal.App.4th 1013, 1016; *People v. Clark* (2000) 82 Cal.App.4th 1072, 1082.)

Under the MDO law, to establish continued treatment of the parolee the People must prove beyond a reasonable doubt that: (1) the parolee continued to have a severe mental disorder; (2) the mental disorder was not in remission or could not be kept in remission without treatment; and (3) by reason of the mental disorder, the parolee continued to represent a substantial danger of physical harm to others. (§§ 2962, subds. (a) & (d)(1), 2966, subd. (c), 2972, subd. (e); *People v. Anzalone* (1999) 19 Cal.4th 1074, 1077; *People v. Fernandez* (1999) 70 Cal.App.4th 117, 126; *People v. Superior Court (Myers)* (1996) 50 Cal.App.4th 826, 837.)

In this case, defendant challenges the trial court's findings as to the second and third elements, that his mental disorder was not in remission and that he represented a substantial danger of physical harm to others by reason of his mental disorder. Dr. Welsh, who had observed defendant at Patton for approximately six months; had consulted with clinical and nursing staff assigned to work with defendant; and had reviewed defendant's medical records, Patton treatment notes, and supporting documents, opined that defendant's mental disorder was not in remission and that defendant presented a substantial danger of physical harm to others by reason of his severe mental disorder.

We agree with the People that substantial evidence supports this conclusion. Dr. Welsh noted that defendant had evidenced symptoms of acute and severe mental illness within the last year and identified 13 specific examples in which defendant

displayed acute symptoms of a severe mental illness. Specifically, defendant had shown verbal and physical aggression, anger, poor insight and judgment, pressured speech, and mood swings. There were incidents where defendant became angry and argued while receiving his medication, kicked another patient, made sexually inappropriate comments to a psychiatric technician, was observed yelling at peers, and was observed shoving and spitting on a peer while playing pool. Dr. Welsh's report provided substantial evidence that defendant had a severe mental disorder that was not in remission or could not be kept in remission without treatment.

Dr. Welsh's report also amply supported the trial court's finding that defendant presented a substantial danger of physical harm to others by reason of the severe mental disorder. Defendant's mental illness was not stabilized in the hospital, so there was very little chance he would be stable in the community. In addition, as noted by Dr. Welsh, defendant had exhibited verbally and physically aggressive behavior towards staff and peers. In one incident, defendant had pushed a peer, raised a pool cue in a threatening manner at that peer, and spat in the face of that peer. Dr. Welsh noted that defendant's physically and verbally aggressive behaviors occurred during the presence of acute psychiatric symptoms, specifically mania, impulsivity, and poor judgment. He also determined that defendant was unable to manage his anger impulses and continued to be dangerous as he continued to cycle in and out of acute mental disorder symptoms. Defendant's history of habitual offending and substance abuse were also significant factors that made defendant a substantial danger of future violence. Other factors were

defendant's personality disorder, impulsivity, anger, lack of remorse, habitual noncompliance with staff, and failure under supervision.

Additionally, Dr. Welsh and ITT opined that there was not reasonable cause to believe defendant could be safely and effectively treated in the community based on defendant's behavior in the last three months. Defendant had been argumentative and noncompliant with the unit staff and he had been argumentative with his unit psychiatrist about his medications, which was not a good indicator for risk management in a less restrictive setting. Although defendant was able to articulate a relapse prevention plan, he had difficulty applying it in emotionally charged situations; he had demonstrated relatively little insight into his mental illness and had little appreciation for psychiatric relapse; and he had not shown that he can anticipate a psychiatric relapse, as he had not approached any of the unit staff when these crises arose, instead blaming others and becoming exceedingly unreasonable in normal negotiations.

The above factors and the report of a qualified expert supported the trial court's findings that defendant's mental disorder was not in remission and that defendant presented a substantial danger of physical harm to others. (See, e.g., *People v. Valdez*, *supra*, 89 Cal.App.4th 1013, 1018; *People v. Clark*, *supra*, 82 Cal.App.4th 1072, 1083.) Defendant's arguments to the contrary are in essence a request that we reweigh the evidence credited by the trier of fact. We do not reweigh or reinterpret the evidence on appeal and defer to the fact finder's resolution of credibility. (*People v. Memro* (1995) 11 Cal.4th 786, 846; *People v. Ochoa* (1993) 6 Cal.4th 1199, 1206; *People v. Miller*, *supra*, 25 Cal.App.4th at p. 919; *People v. Culver* (1973) 10 Cal.3d 542, 548.) The trial

court here impliedly found the report of the People's expert to be credible and rejected defendant's evidence to the contrary.

The trial court, as a reasonable trier of fact, clearly had substantial evidence upon which to base its findings that defendant had a severe mental disorder that was not in remission or could not be kept in remission without treatment, and that by reason of the severe mental disorder he represented a substantial danger of physical harm to others.

### III

#### DISPOSITION

The judgment is affirmed.

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RICHLI  
J.

We concur:

McKINSTER  
Acting P.J.

GAUT  
J.